

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

RAYMOND FRILEY, #K4969

PETITIONER

VS.

CIVIL ACTION NO. 5:05-cv-124 (DCB) (MTP)

JACK PARKER, Warden; and
JIM HOOD, Attorney General

RESPONDENTS

ORDER

This cause is before the Court on the petitioner's motion for reconsideration (**docket entry 40**) and motion for "summary judgment" (**docket entry 38**) which the Court also treats as a motion for reconsideration. Having carefully considered the motions and response, and being fully advised in the premises, the Court finds as follows:

On June 22, 2007, this Court entered a Judgment of Dismissal, dismissing the petitioner's claims without prejudice for failure to exhaust. The petitioner contends that his case should not be dismissed because the government's motion to dismiss was untimely. The Court finds that the motion was not untimely and that, in any event, 28 U.S.C. § 2254(b)-(1)(A) precludes granting a habeas petition unless the state, through counsel, has expressly waived the exhaustion requirement. Accordingly,

IT IS HEREBY ORDERED that the petitioner's motion for reconsideration (**docket entry 40**) and motion for "summary judgment" (**docket entry 38**) which the Court also treats as a motion for

reconsideration, are DENIED.

SO ORDERED, this the 2nd day of August, 2007.

s/David Bramlette
UNITED STATES DISTRICT JUDGE